

## **REMARKS**

Applicant respectfully requests entry of the remarks submitted herein. Claims 1-19 are pending in the application and stand rejected. Applicant has herein amended the specification at paragraphs [0001], [0002], [0004], [0031], [0037], and [0043] to add appropriate section headings and subheadings. Claims 1 and 16 have been amended herein to recite that the flange is positioned within the half of the lid proximal to the hinge. Support for these amendments can be found, for example, in the specification at paragraph [0030]. Applicant also has amended claim 19 to recite a method of using the microtube of claim 1, comprising placing a material into the microtube and using the microtube as an aseptic storage vessel, a reaction vessel, or a vessel for centrifugation of the material. Support for this amendment can be found, for example, in the specification at paragraphs [0027] and [0043]. Thus, no new matter has been added.

In light of these amendments and the following remarks, Applicants respectfully request reconsideration and allowance of claims 1-19.

### Objection to the Specification

The Examiner objected to Applicant's disclosure for lacking appropriate headings. Applicant has herein amended paragraphs [0001], [0002], [0004], [0031], [0037], and [0043] of the specification to add section headings and subheadings as required by 37 C.F.R. § 1.77(b).

In light of these amendments, Applicant respectfully requests withdrawal of the objection to the specification.

### Rejection under 35 U.S.C. § 112

The Examiner rejected claim 19 as allegedly being indefinite under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. Specifically, the Examiner asserted that claim 19 provides for the use of a microtube, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process application is intending to encompass.

To further prosecution, Applicant has amended claim 19 to recite a method for using the microtube of claim 1, comprising placing a material into the microtube and using the microtube as an aseptic storage vessel, a reaction vessel, or a vessel for centrifugation of the material. Applicants respectfully submit that claim 19 as amended is definite, and that a person of ordinary skill in the art at the time Applicants filed would have understood what the presently claimed method encompasses.

In light of the above, Applicant respectfully requests withdrawal of the rejection of claim 19 under 35 U.S.C. § 112, second paragraph.

#### Rejection under 35 U.S.C. § 101

The Examiner rejected claim 19 under 35 U.S.C. § 101, asserting that the claimed recitation of a use, without setting forth any steps involved in the process, results in a claim that is not a proper process claim under 35 U.S.C. § 101.

To further prosecution, Applicant has herein amended claim 19 to recite a method for using the microtube of claim 1, comprising placing a material into the microtube and using the microtube as an aseptic storage vessel, a reaction vessel, or a vessel for centrifugation of the material. Applicant respectfully submits that present claim 19 properly sets forth steps involved in the process of using the claimed microtube, and presents patentable subject matter under § 101.

In light of the above, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 19 under 35 U.S.C. § 101.

#### Rejection under 35 U.S.C. § 102

The Examiner rejected claims 1-19 under 35 U.S.C. § 102 as allegedly being anticipated by the Perlman patent (U.S. Patent No. 5,225,165). The Examiner alleged that Perlman discloses all limitations of the pending claims.

Applicant respectfully disagrees. A claim is anticipated under § 102(b) only if each and every limitation is disclosed in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of*

*California*, 814 F.2d 628, 639 (Fed. Cir. 1989) and M.P.E.P. § 2131. The Perlman patent fails to satisfy this requirement.

Without acquiescing to the Examiner's rejection, and to further prosecution, claim 1 has been amended to recite a microtube comprising a container having an open end defining an opening, a closed end, and a lid adapted to make closing contact with the opening of the container, wherein the lid is provided with a flange extending outwardly therefrom, wherein the flange is positioned within the half of the lid proximal to the hinge and is arranged to move towards the closed end of the container upon application of a mechanical force to a surface of the flange so as to remove the closing contact and open the container. Claim 16 also has been amended to recite that the flange is positioned within the half of the lid proximal to the hinge.

Perlman does not disclose each and every limitation of present claims 1 and 16. For example, Perlman fails to disclose either a flange positioned within the half of the lid proximal to the hinge, as recited in present claims 1 and 16, or a flange that moves toward the closed end of the tube upon the application of mechanical force to the flange, as recited in present claim 1. To the contrary, Perlman discloses a lid extension that is "attached within the half of the lid *distal* from the hinge." *See*, column 3, lines 10-14. This section of Perlman further discloses "attachment [of the lid extension] on or near the original lifting tab and *relatively far from the hinge*." *See* column 3, lines 11-14. Thus, Perlman fails to disclose each and every limitation of the present claims. As such, Perlman does not anticipate claims 1-19.

In light of the above, Applicant respectfully requests withdrawal of the rejection of claims 1-19 under 35 U.S.C. § 102(b).

Applicant : Roy Garvin et al.  
Serial No. : 10/525,127  
Filed : April 5, 2006  
Page : 9 of 9

Attorney's Docket No.: 18880-0002US1

### CONCLUSION

Applicant submits that claims 1-19 are in condition for allowance, which action is respectfully requested. The Examiner is invited to telephone the undersigned agent if such would further prosecution. Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: March 25, 2009/

/Elizabeth N. Kaytor/

Elizabeth N. Kaytor, Ph.D.

Reg. No. 53,103

Fish & Richardson P.C.  
60 South Sixth Street  
Suite 3300  
Minneapolis, MN 55402  
Telephone: (612) 335-5070  
Facsimile: (877) 769-7945